



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road Suite 800
Richardson, Texas 75081

OR2010-14486

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 399403 (PIR No. 661-10).

The Flower Mound Police Department (the "department"), which you represent, received a request for two specified police reports. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note that the submitted information relating to incident number 10-030670 includes a court document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). Although you also seek to withhold the court document, which we have marked, under section 552.108, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the marked court document may not be withheld under section 552.108 and must be released pursuant to section 552.022(a)(17).

Next, we address your claims under section 552.108 for the rest of the submitted information. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law

enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the remaining information relating to incident number 10-030670 would interfere with a pending criminal investigation. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to the remaining information relating to incident number 10-030670. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). You state that the submitted information relating to incident number 05-028967 pertains to a closed case that did not result in a conviction or a deferred adjudication. Based on your representations, we conclude that section 552.108(a)(2) is generally applicable to the information relating to incident number 05-028967.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The department must release basic offense and arrest information, including detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the remaining information relating to incident numbers 10-030670 and 05-028967 under sections 552.108(a)(1) and 552.108(a)(2).

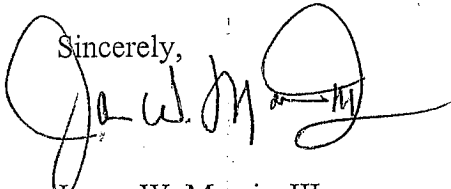
In summary: (1) the marked court document must be released pursuant to section 552.022(a)(17) of the Government Code; and (2) the rest of the submitted information may be withheld under section 552.108 of the Government Code, except for the basic information that must be released under section 552.108(c).¹

¹We note that basic information includes an arrested person’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a large, stylized initial 'J' and 'M'.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 399403

Enc: Submitted information

c: Requestor
(w/o enclosures)